

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:

H. FLECK et al. : Confirmation No.: **8579**

Application Serial No.: **10/785,423** : Group/Art Unit: **2618**

Filing Date: **February 23, 2004** : Examiner: **Janelle N. YOUNG**

Title: *Automated Data Migration*

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST TO WITHDRAW FINAL OFFICE ACTION

Sir:

In response to the final Office Action of December 9, 2009, applicant respectfully requests withdrawal of the finality of the Office Action for the reasons below:

REMARKS

The Office has issued a final Office Action dated December 9, 2009 for the above referenced patent application. However, the last communication issued by the Office was a Notice of Panel Decision dated September 2, 2009 indicating that prosecution will be reopened, and a new Office Action would be issued. Furthermore, the Office Action now rejects the claims based on a newly applied reference, Ito et al. (EP 1 359 777), and states that applicant's previous arguments are moot in view of the new ground of rejection.

Applicant respectfully submits that it is improper to issue a final Office Action after a Notice of Panel Decision, when the final Office Action applies a new ground of rejection. The newly applied reference cannot be in response to amendments, since none were submitted with the Pre-Appeal Brief Request for Review filed November 21, 2008.

Therefore, applicant respectfully requests withdrawal of the finality of the Office Action, and that the period for reply be restarted as of the mailing date of the new non-final Office Action.

Respectfully submitted,

Dated: 16 December 2009

s/Keith R. Obert/

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